

Problematic Questions Related to Lawsuit Enforcement in the Georgian Jurisdiction System

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Abstract

In the given article we will discuss lawsuit enforcement questions and methods which have acutely arisen and made contentious the problem of its necessity and its usage in jurisdiction in the recent period. Accordingly, it became necessary to research and study lawful nature of lawsuit enforcement measures as an important institute of the Public Procedural Law. In our opinion, courts have to install a unanimous practice in regard to lawsuit enforcement methods. Although, we must observe that it was not our aim to give general characteristics of the suit enforcement as an institute or to discuss its various methods. In this article we will try to characterize the criteria of the lawfulness of the lawsuit enforcement measures and also problems of its usage, abstaining from it and of its change as based on the Georgian jurisdiction and the existing law practice in Georgia

Keywords: Public, lawsuit, enforcement, measures

Introduction

In 2006, amendments were made in the Georgian Civil Procedural Code according to which, it seemed that suit enforcement measures became complete; though, this action did not give any advance as there still were a lot of problematic issues; particularly, the following issues are still disputable: criteria used about suit enforcement measures, basis proving supposition about suit enforcement demands, issues related to cancellation of satisfied suit enforcement court ruling.

Foreseeing all above mentioned, subject of our research with given issue is presented by the act received by the court which lays claims to other party for satisfaction of suit enforcement measures. Within the frames of research on different levels, the most frequent reasons of these results and their legitimate basis are discussed.

Urgency of the topic

The topic is urgent as usage of suit enforcement measures has great place in court procedure and accordingly, its correct usage is important for execution of decisions made by the court.

Today, issues related to suit enforcement measures are seen differently by the court; there is no one united practice, there are not defined and concretely established kinds of suit enforcement measures and accordingly, there are lots of problems related to this issue.

Materials and methods

Basic material for previous research is Georgian Civil Procedural Code received on 14th of November, 1997 (with additions and amendments, latest version) and court acts (court ruling). To define problems correctly related to this issue, it is important to use court practice which, considering today's reality, defines how frequently the demand about suit enforcement measures is satisfied or not satisfied; also, how courts of the second instance react to this act (court ruling).

Court practice indicates the problems related to this issue, which is not homogeneous. Thus, it is important to analyze lacunas related to this issue and establish of one united practice.

Suit enforcement measures - its definition according to the juridical dictionary: (1) Suit enforcement is a previous decision of the court aim of which is fulfillment of the measures that should afterwards enforce execution of the decision made by the court. Prerequisite of suit enforcement is a person's individual demand; in other words, suit enforcement measure is a temporary measure used by the court, that important mechanism which gives us the opportunity to prevent procrastination of execution of decisions made by the court. This is the only legal resistance for immediate execution of decisions made by the court in the benefit of a suer. Accordingly, suit enforcement with its content is directly connected with the execution of a decision.

In case of demand of suit enforcement measures, the Civil Procedural Code obliges a suer to ground factual circumstances due to which, demand of using suit enforcement measures will make it difficult or impossible to execute a decision and point contently what kind of suit enforcement measures are necessary to be used. According to today's court practice, courts often do not satisfy suit enforcement measures motivated on that suer whose real evidence cannot prove necessity of the demand of using suit enforcement measures. For example: (3): In the first instance court suer demanded usage of suit enforcement measures for defense in future execution of decision made in benefit of himself/herself. He / she motivated that a defendant's acts harmed him/her; particularly, his/her living home was

damaged which was proved by resolution of experts; accordingly, suer demanded for prevention procrastination of execution of decision to seize the property which was on the name of a defendant. This demand was partially satisfied by the first instance court, particularly before the final decision about this dispute; a defendant was banned to alienate property which was in his/her ownership. Defendant having appealed first instance court ruling motivated on that, by the given enforcement measures he/she will be harmed. The Court of Appeal satisfied demand of a defendant and abolished used suit enforcement measures by the first instance based on that, the court of appeal considers (4) that the necessity of usage of suit enforcement measures was not proved by a suer's real evidence and also the amount of damage was not established which would be adequate to enforcement measures. In fact, based on the court of appeal ruling, the suer stayed without enforcement measures.

I think that such understanding of the norm that a person demanding enforcement measures usage is obliged by presenting real evidence to prove necessity of suit enforcement measures usage, does not follow either of the given or suit enforcement measures institute's regulation norms. For convincing court it is enough supposition of circumstance with high probability on which is based a suer's demand about usage of suit enforcement measures; otherwise, probability of circumstance existence should overweight supposition about its non-existence. In this case, existence of such circumstance, coming out from a defendant's acts, will overweight supposition about its non-existence and also it will not be necessary to define the amount of damage for using suit enforcement measures.

In the given case subject of dispute is paying money instead of damage; this kind of suit is executive suit which means that in case of suit satisfaction, the result established by the legal decision will be depended not only on coming into force of decision (how it is in case of recognition suits) but also on a defendant's will. He/she should act about paying money. In case of not existence of such will, the result established by the legal decision will be depended on the forced execution. Accordingly, if in the moment of coming into force of decision, there will not be meanings for suer's satisfaction, for example realization of property, due to ordering finances, decision will become not executed decision. Naturally, there is question how a suer in future will be able to execute the decision in the benefit of himself/herself when the second instance court abolished suit enforcement measures and there is no legal means that a suer will have a chance to appeal in higher court ruling received by the court of appeal about abolishment of enforcement measures. In fact, a suer stays without any resistance defended by the law for execution of the decision in his/her benefit in future.

Accordingly, the court is obliged not only to decide dispute between the parties correctly and objectively, but also to ensure the party for

execution of decisions in future and not leave it without suit enforcement measures.

It should be noted that (2) coming out from suit enforcement institute aims and its operativeness, a legislator for satisfaction of declaration, while noting factual circumstances, takes into consideration high standards. This approach is seen in different ruling of Georgian Supreme Court (5) according to which, the court has the right based on the party's demand to use suit enforcement measures which will obstruct execution of the decision made by the court in future. Notable, within the frames of the burden of evidence, the party is obliged to convince the court to make suit enforcement measures, supposition as it concerns future events that, unlike the cases in the past, can be proved by presenting a particular evidence.

This approach is also seen in scientific literature; the court can use suit enforcement measures based on that fact which has character of supposition and that there is no necessity to present the evidence for proving this facts. Thus, the basis of suit enforcement measures does not answer the question what kind of evidence and on what level should the party present.

Accordingly, based on the analysis of the legislation record, court practice and scientific literature, we can make conclusion that a suer is obliged to use suit enforcement measures only by pointing those circumstances which will give a suer proved supposition that non-use of suit enforcement measures will negatively influence the court decision execution in future. So, it is not correct when the court refuses the party to use suit enforcement measures, motivated that he/she with real evidence was not able to prove necessity of using suit enforcement measures. In the given case, not real evidence is obligatory but high quality of probability which gives proved doubt to court that non-use of suit enforcement measures will obstruct execution of the decision in favor of the party.

Conclusion

In conclusion it can be said that courts should create similar practice related to the usage of suit enforcement measures, encourage court to execute decisions. Though, the process of execution is not competence of the court; the court should be interested that decisions made by them would be executed and not only given on paper.

The second instance court should also take into consideration factual circumstance; if it abolishes usage of suit enforcement measures satisfied by the first instance court, the party will stay without suit enforcement measures which will make problems to execute decisions made by the court in his/her favor in future. Accordingly, the second instance court should be more legally obliged with this issue and should not leave the party without suit enforcement measures, without that legal resistance with protects a suer from

non-execution of decisions in future. It is unacceptable that the court could refuse satisfaction of demand about suit enforcement measures, based on that suit demand is not counterweight of using adequate suit enforcement measures.

Suit enforcement measures are means of prevention any obstacles related to the execution of the decision. It is guaranty of protection rights on property of physical and juridical people and serves for restoration of abolished rights. Meaning of suit enforcement measures is expressed in the following was: it defends legal interests of a suer. If the right is not implemented, there is no sense in recognizing rights. That is execution of the decision made by the court, suit enforcement is one of the real guaranty of its fulfillment.

Thus, we can conclude that courts should collaborate with each other and establish one practice which will help them to decide these issues legally correctly and to reduce deficiency which is in the legislation related to these issues.

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